

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
SKYLOR HEARN
FREEMAN F. MARTIN
RANDALL B. PRINCE
DEPUTY DIRECTORS



COMMISSION
STEVEN P. MACH, CHAIRMAN
A. CYNTHIA LEON
JASON K. PULLIAM

RECEIPT FOR HAND DELIVERY

Date: September 11, 2019

To: Office of the Attorney General
Open Records Section

From: Albert DiMarco
Office of General Counsel
Texas Department of Public Safety

RE: Public Information Request for offense report related to the 2/15/2018 arrest of
Sebastain Zapata (PIR # 19-3894)

Acknowledgement of Delivery:

Name

Date and Time of Delivery:

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
SKYLOR HEARN
FREEMAN F. MARTIN
RANDALL B. PRINCE
DEPUTY DIRECTORS



COMMISSION
STEVEN P. MACH, CHAIRMAN
A. CYNTHIA LEON
JASON K. PULLIAM

September 11, 2019

Via Hand Delivery

Attorney General of Texas
Open Records Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

RE: Public Information Request for offense report related to the 2/15/2018 arrest of Sebastain Zapata (PIR # 19-3894)

DATE REQUEST FOR INFORMATION RECEIVED:

9/9/2019

DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:

9/11/2019

Dear Open Records Division:

The Department of Public Safety received the above-referenced request for information from Alice Valkova on September 9, 2019. We believe some or all of the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code. Accordingly, we are requesting a ruling regarding the release of these records.

Section 552.101 – Sexual assault against a minor

Section 552.101 of the Government Code states that “[i]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In Open Records Decision No. 393 (1983), your office concluded that information that either identifies or tends to identify a victim of sexual assault or another sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and

public did not have a legitimate interest in such information). The present records identify the victim of an alleged sexual assault. Accordingly, the Department believes that all information that identifies or tends to identify the victim must be withheld pursuant to section 552.101 of the Government Code in accordance with the common-law doctrine of privacy.

This section encompasses section 261.201 of the Family Code, which states:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
 - (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
 - (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.
- ...
- (d) The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential, unless this information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161.
- ...
- (k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.
- (l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:
 - (1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:
 - (A) the child who is the subject of the report; or
 - (B) another child of the parent, managing conservator, or other legal representative requesting the information;

- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and
- (3) the identity of the person who made the report.

The requested information relates to an investigation into alleged child abuse under chapter 261 of the Family Code. *See* Family Code § 261.001(1)(E) (definition of child abuse includes continuous sexual abuse of young child or children under Penal Code § 21.02, indecency with a child under Penal Code § 21.11, sexual assault under Penal Code § 22.011, or aggravated sexual assault under Penal Code § 22.021). In addition, the requested information consists of files, reports, records, communications, or working papers used or developed in the course of the investigation into child abuse; therefore, this information is within the scope of section 261.201. Additionally, the Department has not adopted a rule governing the release of this type of information. Further, the requestor has not stated that she is an adoptive parent, parent, managing conservator, or other legal representative of the child who is the subject of the reported abuse or neglect. Accordingly, the Department believes these records are confidential by law, as set forth in section 261.201(a) of the Family Code, and should therefore be excepted from required public disclosure pursuant to section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Please find enclosed the request from Alice Valkova, the notice of our request for a ruling sent to the requestor, and the responsive records we wish to except from required disclosure. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

Albert DiMarco

Albert DiMarco
Assistant General Counsel

Enclosure(s)

cc: Alice Valkova
79939-87896125@requests.muckrock.com